



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

08-17-07

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Order Instituting Rulemaking on the  
Commission's Own Motion to Assess and  
Revise the Regulation of Telecommunications  
Utilities

Rulemaking 05-04-005  
(Filed April 7, 2005)

Rulemaking for the Purposes of Revising  
General Order 96-A Regarding Informal Filings  
at the Commission

Rulemaking 98-07-038  
(Filed July 23, 1998)

**COMMENTS OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T  
CALIFORNIA (U 1001 C) ON ASSIGNED COMMISSIONER'S RULING ON  
HEARINGS REGARDING AT&T ADVICE LETTERS AND EX PARTE BAN**

AT&T California hereby files the following comments on the Assigned Commissioner's Ruling on Hearings Regarding AT&T Advice Letters and Ex Parte Ban ("Assigned Commissioner's Ruling" or "Ruling") dated August 6, 2007, pursuant to ordering paragraph 1 of the Ruling. AT&T California comments briefly on the scope of identified issues, on the estimated time for presenting witnesses, and on the Ruling's recategorization of this rulemaking proceeding by imposing the burden of proof on AT&T and prohibiting *ex parte* communications.

**1. The Scope of Issues for Hearing**

Issue No. 3 is ambiguous, but seems to suggest an inquiry into the extent to which AT&T "has reformed its processes and procedures" to ensure compliance with the decision in the 1998 case. Ruling, p. 6. This issue should not be included in this proceeding. First, there is no basis to pursue such an inquiry. Second, neither TURN nor ORA, in connection with AT&T's revisions to the advice letters or otherwise, has ever suggested that Pacific Bell failed to implement the changes required by the decision in the 1998 case. It would be fundamentally unfair to turn issues dealing with the prospective application of AT&T's advice letters into a de

facto enforcement proceeding. In the absence of the provisions removed by the advice letters, if AT&T's marketing practices irritate or abuse customers, they will leave, and if we violate the law we risk legal penalties. This is essentially the findings of the Phase I URF decision. It makes no sense to launch a proceeding into AT&T's processes and procedures over the past decade, which have no relationship to the advice letter changes. As the Ruling makes clear, the issue before the Commission is to determine what ought to occur prospectively, rather than whether "processes and procedures" in hind-sight were reformed to ensure enforcement of the 1998 case. For all these reasons, Issue 3 in the Ruling should be removed.

The basis for this proceeding, as the Phase 1 URF decision repeatedly acknowledges (e.g. Decision No. 06-08-030, Mimeo Op., pp. 41-42), is to provide a "uniform" regulatory framework for all market participants to the extent it is possible to do so, given the Commission's jurisdictional limitations. Indeed, at the November 7, 2006, prehearing conference, the Commission noted as an issue for consideration whether "there is a need for uniform customer disclosure rules that apply to all carriers on a going forward basis in the competitive marketplace." Order Modifying and Granting Limited Rehearing of Decision 06-08-030, Decision No. 06-12-044, Mimeo Op., pp. 29-30. A further issue for this stage of the proceeding should be whether any customer disclosure Tariff Rule 12 obligations that apply to AT&T California should also be required for other carriers.

## **2. Estimate of Number of Witnesses and Time for Hearings**

The Ruling requests the parties to comment on the amount of time needed for presenting witnesses, and, to the extent possible, the number of witnesses they intend to produce. Based on the current issues, AT&T California estimates that it would present no more than three witnesses and that the time for hearings on its witnesses would be approximately two days.

### **3. Objections to Recategorization**

In the Order Instituting Rulemaking for the Purpose of Assessing and Revising the Regulation of Telecommunications Utilities, dated April 7, 2005, that commenced this proceeding, the Commission categorized the proceeding as quasi-legislative “unless and until the determination is modified by the Commission pursuant to Rule 6.4 or 6.5.” OIR 05-04-005, Mimeo Op., p. 9. The August 4, 2005 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge confirmed that “[t]his proceeding is quasi-legislative, and no party has contested the categorization.” Scoping Memo., p. 6. Thus, this proceeding is currently categorized as quasi-legislative until modified by the Commission.

As explained above, AT&T believes the issue before the Commission is whether the changes made by the AT&T advice letters should stand; retroactive enforcement of the 1998 case is not only irrelevant and unnecessary, but it is also unfair and without any foundation. The adjudicatory categorization of the 1998 case should not have any influence on the categorization of this proceeding, which addresses only prospective policy. The Assigned Commissioner’s Ruling *sua sponte* recategorizes certain issues in this proceeding into the nature of a complaint proceeding, placing the burden of proof on AT&T California and prohibiting *ex parte* communications. Ruling, pp. 6-7, Ordering ¶ 2. The Commission recently held that changes in categorization are “consequential” and “significantly impacts the nature, extent, and scope of the Commission’s decision making inquiry...”<sup>1</sup> Such a substantive change or recategorization is unnecessary and unwarranted and should be reversed.

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<sup>1</sup> *Utility Consumers’ Action Network v. SBC Communications, Inc. et al.*, Decision No. 07-07-020, Revised Proposed Interim Decision on Alleged Ex Parte Violations, Mimeo. Op., p. 13 (July 12, 2007). It should be noted that the time for filing an application for rehearing of this decision is still open.

Dated: August 17, 2007

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the **COMMENTS OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) ON ASSIGNED COMMISSIONER'S RULING ON HEARINGS REGARDING AT&T ADVICE LETTERS AND EX PARTE BAN**, filed today in **R.05-04-005/R.98-07-038** by electronic mail and/or by hand-delivery to the persons on the attached consolidated Service List in **R.05-04-005**.

Executed this 17th day of August 2007, at San Francisco, California.

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\_\_\_\_\_  
/s/

Thomas J. Selhorst

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